

**BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.**

ATTORNEYS AT LAW

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B. JAY BARAFF  
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AARON P. SHAINIS  
LEE J. PELTZMAN  
MARK J. PALCHICK  
JAMES E. MEYERS

February 1, 1993

**RECEIVED**

OF COUNSEL

ROBERT BENNETT LUBIC

**FEB - 1 1993**

FAX: (202) 686-8282

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554


Re: MM Docket No. 92-308  
Slidell, Louisiana

Dear Ms. Searcy:

Transmitted herewith, on behalf of Carolina K. Powley d/b/a Unicorn Slide and Trudy M. Mitchell, applicants in the above-referenced comparative hearing, are an original and six (6) copies of their Joint Request for Approval of Settlement Agreement and Settlement Agreement, Escrow Agreement and Declarations attached thereto.

Please contact the undersigned should questions arise regarding this filing.

Very truly yours,

  
Lee J. Peltzman  
Counsel for  
CAROLINE K. POWLEY d/b/a  
UNICORN SLIDE

LJP:bpt  
Enclosures  
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No. of Copies rec'd  
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*Handwritten initials "ATG" over the stamp*

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

**RECEIVED**  
FEB - 1 1993  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 92-308
	)	
CAROLINE K. POWLEY d/b/a	)	File No. BPCT-900518KO
UNICORN SLIDE	)	
	)	
TRUDY M. MITCHELL	)	File No. BPCT-900726KG
	)	
For Construction Permit for a	)	
New Commercial Television Station	)	
on Channel 54 in Slidell, Louisiana)	)	

To: Administrative Law Judge  
Richard L. Sippel

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Carolina K. Powley d/b/a Unicorn Slide ("US") and Trudy M. Mitchell ("Mitchell") (collectively "Petitioners"), by their attorneys, pursuant to Section 73.3525 of the Commission's rules, hereby seek the approval of the attached Settlement Agreement under which the application of US will be dismissed with prejudice and the application of Mitchell will be granted. In support thereof, Petitioners state the following:

There presently are pending before the Commission the applications of Petitioners for authority to construct and operate a new television station on Channel 54 at Slidell, Louisiana. Petitioners have included Settlement Agreements which, upon approval, will eliminate the competition for the Channel 54 allocation, thereby conserving Commission resources and paving the way for the earlier institution of a new television service to Slidell. Pursuant to that Agreement, US

has agreed to dismiss its application in return for monetary consideration. The Settlement Agreement is conditioned upon the following: (a) Commission approval of the Agreement; (b) dismissal with prejudice of the application of US; and (c) grant of Mitchell's application.

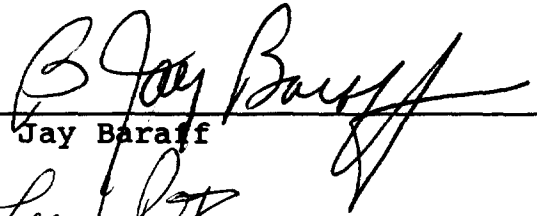
Each of the Petitioners has executed a Declaration setting forth that approval of the proposed settlement is in the public interest and that neither of the Petitioners filed their applications for the purpose of seeking or carrying out a settlement. Accordingly, the Petitioners have satisfied the requirements of Section 73.3525 of the Commission's rules.

In view of the foregoing, Petitioners respectfully request that the Presiding Officer approve the attached Settlement Agreement and, upon such approval, dismiss the application of US with prejudice, grant the application of Mitchell and terminate the above-captioned proceeding.

Respectfully submitted,

**CAROLINE K. POWLEY d/b/a  
UNICORN SLIDE**

By:

  
B. Jay Baraff

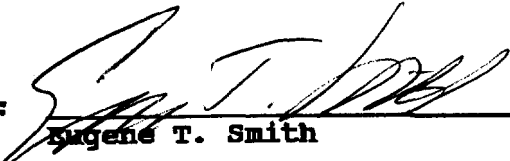
By:

  
Lee J. Peltzman  
Her Attorneys

**BARAFF, KOERNER, OLENDER,  
& HOCHBERG, P.C.  
5335 Wisconsin Avenue, N.W., Suite 300  
Washington, D.C. 20015  
(202) 686-3200**

**TRUDY M. MITCHELL**

By:

  
Eugene T. Smith

**EUGENE T. SMITH**  
Attorney at Law  
715 G Street, S.E.  
Washington, D.C. 20003  
(202) 347-2363

By:

  
Julian Freret  
Her Attorneys

**BOOTH, FRERET & INLAY**  
1233 20th Street, N.W.  
Washington, D.C. 20036  
(202) 296-1319

**February 1, 1993**

## **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (this "Agreement") is made as of the 29<sup>th</sup> day of January 1993, by and between Caroline K. Powley d/b/a Unicorn Slide ("US") and Trudy M. Mitchell ("Mitchell") (hereinafter collectively the "Parties").

### **WITNESSETH:**

**WHEREAS**, Mitchell and US have pending before the Federal Communications Commission (the "FCC") applications (respectively, File Numbers BPCT-900726KG and BPCT-900518KO) for a construction permit for a new television station (the "Station") to operate on Channel 54 at Slidell, Louisiana; and

**WHEREAS**, these two applications, proposing the same channel at the same place, are mutually-exclusive such that only one of the applications may be granted; and

**WHEREAS**, Mitchell desires promptly to construct a television station on Channel 54 at Slidell, Louisiana and her construction permit can only be granted upon dismissal of the US application.

**WHEREAS**, the Parties recognize that it is in the best interests of both of them to avoid the time and expense of continued litigation and thereby to conserve the time and resources of the FCC and the Parties, and that it is in the best interest of the public to avoid delay in implementation of the new television service that would result from further prosecution of these mutually-exclusive applications.

**NOW THEREFORE,** in consideration of their mutual representations and promises stated herein and intending to be legally bound, the Parties covenant and agree as follows:

1. **FCC Consent.** This Agreement is entered into subject to approval by the FCC or its delegatee, and it shall be void unless the FCC or its delegatee approves it. The Parties shall immediately make good faith efforts to resolve any and all FCC objections in order to obtain prompt approval by the FCC.

2. **Joint Request for Approval of Agreement.** The Parties agree to file with the FCC on or before February 1, 1993, a Joint Request for Approval of this Agreement ("Joint Request"). The Joint Request shall be accompanied by a copy of this Agreement and the supporting documentation required by Section 311(c) of the Communications Act of 1934, as amended and Section 73.3525 of the Rules of the FCC.

3. **Consideration.** Mitchell shall pay the sum of Thirty-Five Thousand Dollars (\$35,000.00) (the "Settlement Amount") to US. The Settlement Amount shall be payable as follows: Thirty-Five Thousand Dollars (\$35,000.00) shall be paid to US by certified check or wired funds within five (5) business days after an order by the FCC granting to Mitchell a valid construction permit for a television station on Channel 54 at Slidell, Louisiana, becomes final.

4. **Escrow Amount.** Mitchell agrees that within five (5) business days of the execution of this Agreement, Mitchell shall place in escrow the sum of Thirty-Five Thousand Dollars

(\$35,000.00) (the "Escrow Amount"). The Escrow Agents shall deposit the Escrow Amount in an interest-bearing account, with all interest accruing to the benefit of Mitchell. The Escrow Agents shall thereafter immediately provide written documentation of the opening of the account to US or her designated representative. Payment of the Escrow Amount shall be made from the escrow account by Escrow Agent on or before the fifth (5th) business day after the date on which the Order or Orders issued by the FCC or its delegatee granting Mitchell's application and dismissing the application of US becomes a Final Order of Orders, as defined in paragraph 6 below. Payment shall be made by check or by wired funds to "Law Firm of Baraff, Koerner, Olender & Hochberg, P.C., for the benefit of Caroline K. Powley d/b/a Unicorn Slide."

**5. Conduct of the Parties.** US and Mitchell shall cooperate with the other in good faith and with the FCC or its delegatee by expeditiously furnishing to each other and to the FCC or its delegatee, as may be necessary, any documents or additional information which reasonably may be required, and by the doing of all other acts reasonably necessary to effectuate the objectives of this Agreement or the grant of Mitchell's application. In the event that the FCC or its delegatee fails to permit reimbursement of all of US's expenses as requested by US, US shall have the right to seek reconsideration and/or review of that ruling.

**6. Definition of Final Order.** As used in this Agreement, the term "Final Order" means actions taken by the FCC, or its delegatee, for which no judicial or administrative reconsideration,

review, appeal or rehearing is pending and for which the time for filing such judicial or administrative reconsideration, review, appeal or rehearing has expired.

7. **Notices.** Any notices, request, demand, waiver, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed made or given when it is hand-delivered, or when delivered to a nationally-recognized overnight delivery service (including, but not limited to Federal Express), delivery prepaid, addressed as follows:

To Mitchell

Trudy M. Mitchell  
18100 Commission Road  
Longbeach, MS 39560

With a copy to:

Eugene T. Smith, Esq.  
715 G Street, S.E.  
Washington, D.C. 20003  
and  
Julian P. Freret, Esq.  
Booth, Freret & Imlay  
1233 20th Street  
Suite 204  
Washington, D.C. 20036

To US

Caroline K. Powley  
101 Rubin Court  
#A-4  
Cary, NC 27511

With a copy to:

B. Jay Baraff, Esq.  
Baraff, Koerner, Olender &  
Hochberg  
5335 Wisconsin Avenue  
Suite 300  
Washington, D.C. 20015

8. **Remedies Upon Default.** If either Party defaults under this Agreement, the other Party shall have available to it all remedies to which it is entitled, at law or in equity.

9. **Waiver.** Failure of any Party to complain of any act or omission on the part of any other Party in breach of this Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any rights hereunder. No waiver by any party at any time, express or implied, or any breach



of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a consent to any subsequent breach of the same or other provisions.

**10. Governing Law.** This Agreement shall be governed by and construed in accord with the laws of the State of Louisiana.

**11. Benefit.** This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective successors, heirs, and permitted assigns.

**12. Entire Agreement.** This Agreement embodies all the terms of the understandings between the Parties and contains all of the terms and conditions agreed upon with respect to its subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Agreement which are not fully expressed herein. By signing below, the Parties acknowledge that they have read this Agreement and are fully cognizant of these provisions.

**13. Counterparts.** This undersigned represent and warrant that they are authorized to execute this Agreement. This Agreement may be executed in one or more counterparts, and all so executed shall constitute one Agreement, binding on the Parties, notwithstanding that the Parties are not signatories to the original or the same counterpart.

**14. Headings.** The headings of the paragraphs of this Agreement are inserted and are for reference purposes only. They in no way define, limit or describe the scope of this Agreement or the intent of any of its provisions.



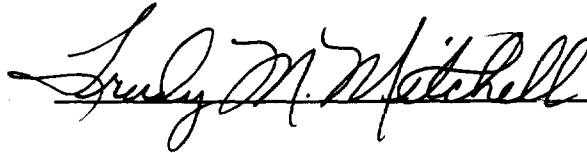
IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the year and date first above written.

Witness:

CAROLINE K. POWLEY d/b/a  
UNICORN SLIDE

Witness:

TRUDY M. MITCHELL

A handwritten signature in cursive script, reading "Trudy M. Mitchell", is written over a horizontal line.

LJP\btc\26011.00\slidell.SA

**ESCROW AGREEMENT.**

THIS ESCROW AGREEMENT is made and entered into this 29th day of January, 1993, by and between Caroline K. Powley d/b/a Unicorn Slide ("US"), Trudy M. Mitchell ("Mitchell") and B. Jay Baraff and Eugene T. Smith (hereinafter collectively referred to as "Joint Escrow Agents").

**WITNESSETH:**

WHEREAS, US and Mitchell have pending mutually-exclusive applications before the Federal Communications Commission ("Commission");

WHEREAS, US and Mitchell have entered into a Settlement Agreement ("Settlement Agreement") requiring the filing with the Commission of a joint request for approval of the Settlement Agreement and the dismissal with prejudice of the application of US;

WHEREAS, the Settlement Agreement requires Mitchell to place into escrow ("Escrow") the sum of Thirty-Five Thousand Dollars (\$35,000.00) ("Escrow Fund") which shall be held in Escrow by the Joint Escrow Agents in accordance with this agreement and the Settlement Agreement; and

WHEREAS, the Joint Escrow Agents have agreed to act as escrow agents pursuant to the Settlement Agreement;

NOW, THEREFORE, it is agreed by and among the parties hereto as follows:

1. Establishment of Escrow. The Joint Escrow Agents shall accept the Escrow Fund pursuant to the terms and conditions of

the Settlement Agreement, and will immediately, upon receipt of cash, place it into Escrow. The funds deposited into Escrow shall be placed in an interest-bearing account for which no bank service charges are assessed at a bank to be located in Washington, D.C. Said account shall be a trust account that will be used in conjunction with the Settlement Agreement and will be separate and distinct from any other account of either of the Joint Escrow Agents, or their respective law firms. All interest earned on the Escrow Fund shall be payable to Mitchell.

2. Disposition of Escrow Fund. On the payment date specified in the Settlement Agreement, the Joint Escrow Agents shall disburse the Escrow Fund to US in accordance with the terms of the Settlement Agreement and will disburse all interest earned thereupon to Mitchell. Upon the distribution of the Escrow Fund in accordance herewith, this Escrow Agreement shall terminate.

3. Liability of Agents. The Joint Escrow Agents will be obligated to perform only such duties as are expressly set forth herein and need not take notice of any provisions of the Settlement Agreement except those specifically referenced herein.

(a) The Joint Escrow Agents shall act as a depositor only and are not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness, or validity of any instrument deposited with them, or for the form or execution of such instrument or for the identity, authority, or rights of any person executing or depositing such instrument.

(b) The Joint Escrow Agents shall be fully protected in acting on and relying upon on any written notice, request, waiver, consent, receipt or other paper or document which the Joint Escrow Agents believe in good faith to be genuine and to have been signed or presented by the proper party or parties specified herein. The Joint Escrow Agents shall not be liable for any error of judgment or for any act either taken or omitted in good faith in connection herewith except their own gross negligence or willful misconduct.

(c) In the event of a dispute between the parties regarding the distribution of the Escrow Fund or accumulated interest thereon, the Joint Escrow Agents shall have no obligation to institute legal action or otherwise attempt to settle such dispute, but shall be entitled, at their option, to continue to hold the Escrow Fund pending receipt of agreement on distribution between the parties, or a direction for disbursement of the Escrow Fund and accumulated interest by a final order of a court having jurisdiction in the matter. The Joint Escrow Agents may also interplead the portion of the Escrow Fund in dispute into the registry of the Superior Court for the District of Columbia. In the event of a law suit or action of any kind between the parties concerning the distribution of the Escrow Fund, the Joint Escrow Agents shall continue to hold the Escrow Fund and will make distribution in accordance with an order of the court upon completion of the litigation.

(d) The Joint Escrow Agents may seek the advice of legal counsel in the event of any dispute or question regarding the construction of any of the provisions of this Escrow Agreement or their duties hereunder, and they shall incur no liability and shall be fully protected with respect to any action taken or suffered by them in good faith in accordance with the opinion of such counsel.

(e) Mitchell and US shall jointly and severally reimburse and indemnify the Joint Escrow Agents for, and hold them harmless against, any loss or liability (including attorneys' fees) incurred without bad faith or willful misconduct on the part of the Joint Escrow Agents arising out of or in connection with their acceptance of, or the performance of, their duties and obligations hereunder, as well as the costs and expense of defending against any claim or liability arising out of or relating to this Escrow Agreement.

4. Titles and Section Headings. Titles and section headings contained herein are for convenience of reference only, and neither form a part of this Escrow Agreement nor are they to be used in the construction or interpretation thereof.

5. Counterparts. The Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Escrow Agreement to be executed on the day and year first written above.

CAROLINE K. POWLEY d/b/a  
UNICORN SLIDE

BY: Caroline K. Powley

TRUDY M. MITCHELL

BY: \_\_\_\_\_

ESCROW AGENTS:

\_\_\_\_\_  
B. Jay Baraff

\_\_\_\_\_  
Eugene T. Smith



IN WITNESS WHEREOF, each of the parties hereto has caused this Escrow Agreement to be executed on the day and year first written above.

CAROLINE K. POWLEY d/b/a  
UNICORN SLIDE

BY: \_\_\_\_\_

TRUDY M. MITCHELL

BY: \_\_\_\_\_

*Trudy M. Mitchell*

ESCROW AGENTS:

*B. Jay Baraff*  
B. Jay Baraff

*Eugene T. Smith*  
Eugene T. Smith

**DECLARATION OF TRUDY M. MITCHELL**

I, Trudy M. Mitchell, am an applicant before the Federal Communications Commission ("FCC") for a construction permit to construct a new television station on Channel 54 at Slidell, Louisiana (File No. BPCT-900726KG).

I have entered into a Settlement Agreement with the other mutually-exclusive applicant in this proceeding and have agreed to pay monetary consideration to that applicant in exchange for its voluntary dismissal. The Settlement Agreement is included as an exhibit to a Joint Request for approval of Settlement Agreement, which has been filed with the Presiding Officer in the Slidell, Louisiana comparative proceeding. Other than the consideration set forth in the Settlement Agreement, I have neither paid nor promised to pay to any competing applicant, nor any principal thereof, any other consideration, either directly or indirectly, in connection with this proceeding, including but not limited to the agreement for the dismissal of its application. I am not a party to any other agreement, either written or oral, with Caroline Powley d/b/a Unicorn Slide or any other entity regarding the payment of consideration for the dismissal of that applicant's application.

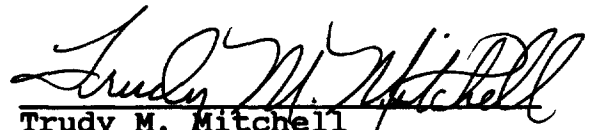
I believe approval of the Settlement Agreement would be in the public interest. It would completely eliminate the need to hold and evidentiary hearing in this proceeding, thereby conserving valuable agency and private resources, and would provide for the expeditious commencement of a new television service to Slidell, Louisiana. In compliance with Section 73.3525(a)(2) of the FCC

Rules, this will state that I did not file my application with the intent or for the purpose of effecting a settlement of this case.

I recognize and accept the condition to be placed upon my construction permit as set forth at paragraph 12 of the Hearing Designation Order.

Under penalty of perjury, I declare that the foregoing facts are true and correct to the best of my knowledge, information, and belief.

Date: January 29, 1993

  
Trudy M. Mitchell

**DECLARATION OF CAROLINE K. POWLEY**

I, Caroline K. Powley d/b/a Unicorn Slide, am an applicant before the Federal Communications Commission (the "FCC") for a construction permit to construct a new television station on Channel 54 at Slidell, Louisiana (File No. BPCT-900518KO).

I have entered into a Settlement Agreement whereby my application will be voluntarily dismissed in return for monetary consideration paid by Trudy Mitchell. Other than that consideration set forth in the attached Settlement Agreement, I have not received nor been promised any consideration, either directly or indirectly, in connection with this proceeding, including but not limited to, the agreement for the dismissal of my application. I am not a party to any other agreement, either written or oral, with Trudy Mitchell or any other entity regarding the payment of consideration for the dismissal of my application.

I believe approval of the Settlement Agreement would be in the public interest. It would completely obviate the need to hold an evidentiary hearing in this proceeding, thereby conserving valuable agency and private resources, and would provide for the expeditious commencement of a new television service to Slidell, Louisiana.

I did not file my application with the intent or for the purpose of effecting a settlement of this case.

Under penalty of perjury, I declare that the foregoing facts are true and correct to the best of my knowledge, information and belief.

Caroline K. Powley  
Caroline K. Powley

Dated: January 29, 1993

Caroline K. Powley d/b/a Unicorn Slide has incurred expenses in an amount over \$35,000.00 in preparation, filing and prosecution of her Slidell, Louisiana television application. Attached hereto is a statement from the firm, Baraff, Koerner, Olender & Hochberg, P.C., stating that a total of \$18,269.11 has been incurred in representing Ms. Powley before the Commission with respect to the Slidell application. Additional documentation is being obtained and will be provided to the Commission through a supplemental submission.

**Attachment**

# **BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.**

**ATTORNEYS AT LAW**

**5335 WISCONSIN AVENUE, N.W., SUITE 300  
WASHINGTON, D.C. 20015-2003**

**(202) 686-3200**

**B. JAY BARAFF  
ROBERT L. OLENDER  
JAMES A. KOERNER  
PHILIP R. HOCHBERG  
AARON P. SHAINIS  
LEE J. PELTZMAN  
MARK J. PALCHICK  
JAMES E. MEYERS**

**OF COUNSEL  
ROBERT BENNETT LUBIC**

**FAX: (202) 686-8282**

## **STATEMENT IN SUPPORT OF SETTLEMENT**

The law firm of Baraff, Koerner, Olender & Hochberg, P.C., has represented Caroline Powley from early 1991 through the present. The undersigned, Lee J. Peltzman and Alan E. Aronowitz were the attorneys with primary responsibility for her account.

I have reviewed the billing files of our firm for Ms. Powley's account, dealing with her application for a construction permit for a new station to operate on Channel 54 at Slidell, Louisiana. This firm has been paid or is owed a total of \$17,800 for legal fees for services rendered with regard to maintaining the accuracy and currency of Ms. Powley's application; analyzing her comparative prospects; analyzing the application of her opponent, Trudy Mitchell, and developing and implementing strategy for bringing certain deficiencies in that application to the Commission's attention, which took the form of fairly extensive pleadings between us and counsel for Trudy Mitchell; counseling Ms. Powley with regard to the Hearing Designation Order and advising her of her procedural and substantive obligations; and negotiating, reaching and implementing a settlement with Ms. Mitchell in this proceeding.

Out-of-pocket expenses in conjunction with our representation of Ms. Powley have been \$469.11.

**BARAFF, KOERNER, OLENDER  
& HOCHBERG, P.C.**

By:   
B. Jay Baraff

# CERTIFICATE OF SERVICE

I, Barbara P. Taylor, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P.C., do hereby certify that on this 1st day of February, 1993, copies of the foregoing document were mailed postage prepaid via United States mail to the following:

Honorable Richard L. Sippel\*  
Federal Communications Commission  
2000 L Street, N.W., Room 214  
Washington, D.C. 20554

**Paulette Laden, Esq.\***  
**Federal Communications Commission**  
**Hearing Branch, Mass Media Bureau**  
**2025 M Street, N.W., Room 7212**  
**Washington, D.C. 20554**

**Eugene T. Smith, Esq.**  
**Law Offices**  
**715 G Street, S.E.**  
**Washington, D.C. 20003**

Julian Freret, Esq.  
Booth, Freret & Imlay  
1233 20th Street, N.W.  
Washington, D.C. 20036

Barbara P. Taylor  
Barbara P. Taylor

**\*Via Hand Delivery**